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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1973

No. 73-1078

JESS L. ELROD, et al., *Petitioners*

vs.

WESTERN CONFERENCE OF TEAMSTERS, et al., *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR EMPLOYER RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals is unpublished, and is reprinted in Appendix "A" to the Petition at pages 1-3.

JURISDICTION

The Memorandum Opinion of the Court of Appeals was issued on December 6, 1973. The Petition for a Writ of Certiorari was filed on January 8, 1974. Petitioners invoke the jurisdiction of this Court pur-

suant to 28 U.S.C. §1254(1). It is the position of the Employer respondents[1] that this Court is without jurisdiction to review this case on writ of certiorari because only cases "in the courts of appeals" may be so reviewed pursuant to 28 U.S.C. §1254(1). The Petition here does not challenge any order or judgment of the Court of Appeals (see "Questions Presented." Petition pp. 3-7). Rather, it attacks allegedly erroneous rulings of the district court (see Appendix to Petition pp. 1-3). In essence, petitioners are seeking review by certiorari of the judgment of the district court. Such review exceeds the jurisdictional grant set forth in 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Should this Court grant review of rulings by the district court on matters not reached by the Court of Appeals?

2. In light of the bases for review on certiorari articulated in Rule 19 of the Supreme Court Rules, should this Court grant review here?

STATUTE AND RULE INVOLVED

The relevant authorities involved herein are 28 U.S.C. §1254(1) and Rule 19(1)(b) of the Supreme

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[1]California Trucking Association
Trucking Employers, Inc.
Mason Mercantile Co., d/b/a Metropolitan Terminals
Piggy Back Shippers
California Shippers Association

Court Rules. Rule 19(1)(b) of the Supreme Court Rules provides as follows:

> "1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:
>
> * * *
>
> "(b) Where a Court of Appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision."

Title 28, Section 1254(1) of the United States Code provides that:

> "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> "(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; . . ."

STATEMENT OF THE CASE

A. The Strike

Petitioners were employed prior to April 8, 1970, by respondent Mason Mercantile Co., dba Metropolitan Terminals (hereinafter referred to as "Metropolitan"), at its terminal facilities in the City of Commerce, California (CR I 332, 29, 32, 34, 35, 37, 39, 44, 48, 50)[2] and were members of and represented for purposes of collective bargaining by Teamsters Local 357 (hereinafter called "Local 357")[3].

On or about April 1, 1970, an illegal strike affecting the entire trucking industry occurred in the Los Angeles area (CR I 52-53), and on April 5, 1970, pickets appeared at Metropolitan's terminal (CR I 29, 32, 34, 35, 44, 47, 48, 50, 52, 54, 56, 57). When the picketing commenced, certain employees, including petitioners, did not report for work (CR I 29-30, 32, 34, 35, 37, 39, 44-45, 50). Metropolitan gave employees who failed to report 24 hours to do so or be fired (CR I 29-30, 32, 39, 45), and on April 7, 1970, Metropolitan discharged all employees who failed to report for work, including all petitioners herein (CR I 30-32, 34, 35, 37, 39, 45, 47, 49, 54, 75).

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[2]The symbols "CR I" and "CR II" refer to Volumes I and II, respectively, of the record in the Court of Appeals. The symbol "RT" refers to the Reporter's Transcript of the proceedings in the district court.

[3]The terms and conditions of petitioners' employment were governed by certain memorandum agreements between Local 357 and Metropolitan binding the parties to the terms of the National Master Freight Agreement (a labor contract negotiated on a nationwide basis by the Teamsters National Freight Industry Negotiating Committee and respondent Trucking Employers, Inc.) and to the terms of the Western States Area Pickup and Delivery Local Cartage and Dock Workers Supplemental Agreement (CR I 77-78, 81-313, 332-33).

All discharged Metropolitan employees subsequently filed grievances with Local 357 protesting their discharge (CR I 36, 38). With their Union's cooperation, they also filed applications for rehire with Metropolitan (CR I 30, 32, 34, 41, 47). Five discharged employees were taken back by Metropolitan as new hires (CR I 31).

B. The "Special Panel"

In June, 1970, respondents Trucking Employers, Inc., and California Trucking Association, on behalf of member-carriers and other employers, including Metropolitan, executed a Stipulation and Agreement (hereinafter called "the Special Panel Agreement") with the National Freight Industry Negotiating Committee, International Brotherhood of Teamsters, Western Conference of Teamsters and Joint Council of Teamsters No. 42 (CR I 21-23). This Special Panel Agreement established a procedure to deal with the multitude of grievances arising out of the trucking industry strike in Los Angeles during April, 1970. The Special Panel Agreement provided that grievances arising from the work stoppage were to be turned over to a Special Panel composed of three Teamsters representatives and three California Trucking Association ("CTA") members. The Special Panel was to hear and decide the following issues:

(1) the status of discharged employees; and

(2) the seniority of employees discharged as a result of the strike and subsequently reemployed, or who might in the future be reemployed.

All parties appearing before the Special Panel were to be permitted to present evidence and argument in support of their respective positions. A majority vote of the Special Panel was to be final and binding on all parties. If the Special Panel deadlocked, the case was to go to an impartial arbitrator[4].

Pursuant to notice, all petitioners appeared before the Special Panel on July 27 and 28, 1970, and presented evidence and argument in support of their position (CR I 30-31, 32-33, 34, 36, 38, 41-42, 46, 47, 50-51, 75). Petitioners read their grievances and had an opportunity to explain why they stayed away from work during the strike (CR I 33-36, 38, 42, 46). Most of the petitioners admitted having actually participated in the strike (CR I 30, 32-33, 36, 38, 46). Union representatives from Local 357 were also present at the hearings and acted as counsel to petitioners (CR I 36, 41-42, 46, 75). Petitioners and the Local 357 representatives had full opportunity to present witnesses, elicit testimony, make objections and motions, and otherwise to present their position (CR I 75). Metropolitan's representatives likewise were given an opportunity to present their position (CR I 76).

In August, 1970, the Special Panel issued a decision denying petitioners reinstatement (CR I 31, 34, 36, 79-80, 337). However, seven other dis-

[4]The Special Panel Agreement also provided that counsel for the Teamsters and counsel for the CTA could mutually agree to alter or amend the language of the Agreement without procuring new signatures. Despite the inclusion of such provisions, the attorneys did not alter or amend the language of the Agreement.

charged Metropolitan employees who failed to report for work during the strike were reinstated.

C. The Proceedings Before the District Court

On February 25, 1971, petitioners filed a complaint for injunctive relief against respondents in the Superior Court of the State of California for the County of Los Angeles, attacking their discharges and the Union respondents' representation of them before the Special Panel. Respondents removed the case to the district court for the Central District of California, and immediately thereafter the Union respondents moved for dismissal and the Employer respondents moved for dismissal and/or summary judgment.

In granting the Employer respondents' motion, the district court found that petitioners had submitted the issue of their employment status to the Special Panel created by the Union and Employer respondents and that the petitioners' claims were barred by the decision of the Special Panel and by the statute of limitations. The district court further found that petitioners' declarations on file with the court showed that the Unions had not acted arbitrarily, discriminatorily or in bad faith in representing petitioners before the Special Panel, and that therefore no breach of the Union's duty of fair representation such as would allow the petitioners to maintain action against the Employers for unlawful discharge was shown.

D. The Decision of the Court of Appeals

Petitioners' appeal from the district court's ruling raised issues in addition to those presented to the district court, including the questions of whether the lower court properly asserted jurisdiction over the case and whether the Special Panel was properly constituted as an arbitral body with power to make final and binding decisions. The Court of Appeals unanimously concluded that federal removal jurisdiction was properly founded on 28 U.S.C. §1441(a) and affirmed the district court's order granting respondents' motions for summary judgment and dismissal with prejudice. The Ninth Circuit concluded that petitioners' affidavits did not conflict in any material respect with the affidavits filed by respondents showing no breach of the Union respondents' duty of fair representation. Accordingly, the Court of Appeals did not find it necessary to decide any other issue raised on appeal.

In reaching its conclusion, the Court of Appeals reasoned that the affidavits of the parties showed that (Appendix to the Petition pp. 2-3):

> "The union and the employers agreed to a variation in the contractual grievance procedures for the processing of [petitioners'] grievances. Such a variation in the form of the grievance procedures is not forbidden by the union's constitution. Our examination of the new procedures, none of which is in factual dispute, failed to reveal any lack of due process. [Petitioners'] claims for reinstatement were presented to and heard by the Special Panel. Nothing in the

record suggests that any [petitioner] was denied a full and fair opportunity to present evidence that he had not picketed, if in fact he had not. The [petitioner] who complained about the stipulations to picketing had earlier admitted his participation. We see nothing unfair about a lawyer's strategic advice to his client not to volunteer information, even if the strategy later turns out to be unsuccessful. A stipulation surrendering an appeal from an arbitration award gives away nothing to which the [petitioners] would have been otherwise entitled."

ARGUMENT

I

THE PETITION IMPROPERLY SEEKS REVIEW OF RULINGS OF THE DISTRICT COURT NOT CONSIDERED BY THE COURT OF APPEALS.

Rule 19 of the Rules of the Supreme Court provides for review of the decisions of the courts of appeals by writ of certiorari. This provision is in accordance with the jurisdictional grant of 28 U.S.C. §1254(1).

In the instant case questions II, III, IV, V and VI raised in the Petition (Petition pp. 3-7) concern matters decided by the district court which were not reached by the Court of Appeals. Petitioners are seeking a redetermination in this Court of the rulings of the district court. Rule 19 makes no provision for review of the decisions of the district courts on writ of certiorari, and the language of 28 U.S.C. §1254(1),

allowing review on certiorari of cases "in the courts of appeal" suggests that questions not considered by the Court of Appeals cannot be reviewed by this Court. Accordingly, the writ should be denied here.

Moreover, question I raised in the Petition challenges only the district court's order of a summary judgment and dismissal with prejudice. It does not challenge the judgment of the Court of Appeals affirming the district court's order. Therefore, review of that question on certiorari is likewise improper, and should be denied.

II

THE PETITION FAILS TO PRESENT ANY BASIS FOR REVIEW BY THIS COURT

Rule 19 of the Rules of the Supreme Court of the United States establishes the principle that review by this Court is warranted only where there are special and important reasons therefor. Even if question I of the Petition properly challenged the judgment of the Court of Appeals affirming the district court's order of summary judgment, certiorari could not be granted unless the petitioners showed special and important reasons why this Court should review the decision of the Court of Appeals.

Petitioners have simply failed to sustain this burden. Although Petitioners argue that the district court abused its discretion, they do not show that the issue is reviewable by this Court. Thus, petitioners do not contend that the decision of the Court of Appeals

affirming the order of summary judgment and dismissal with prejudice is in conflict with the decision of any other court of appeals on the same matter. In fact, petitioners do not cite a single case in support of their attack on the order. Nor does the Petition argue that an important unsettled question of federal law is involved, or that the Court of Appeals decision is in conflict with applicable decisions of this Court.

Finally, the Petition neither argues nor shows that the lower court "departed from the accepted and normal course of judicial proceedings" or sanctioned such a departure by any other court or tribunal, to a degree calling for the exercise of this Court's power of supervision. Indeed, the Court of Appeals carefully scrutinized the record herein covering the grievance-procedures whereby petitioners' claims were initially heard by the Special Panel. The Court of Appeals found that those procedures "failed to reveal any lack of due process" (Appendix to the Petition p. 2.)

III

THE RECORD HEREIN FULLY SUPPORTS THE DECISION OF THE COURT OF APPEALS

Even if the merits of this case had been properly framed for this Court's review, this would not be a case involving any departure from the Unions' duty of fair representation. Respondents' decision to process petitioners' grievances through the Special Panel was neither illegal nor unfair. Federal labor law clearly favors employer-union arrangements designed

to meet special circumstances and encourage industrial peace. *Humphrey v. Moore,* 375 U.S. 335 (1964); *United Steel Workers v. American Mfg. Co.,* 363 U.S. 564, 566 (1960); *Vaca v. Sipes,* 386 U.S. 171, 191 (1967); *Haynes v. United States Pipe & Foundry Co.,* 362 F.2d 414, 416-418 (5th Cir. 1966). The Special Panel which was created in the instant case was a joint labor-management committee consisting of an equal number of members appointed by the International Brotherhood of Teamsters and by the California Trucking Association. As such, the Special Panel constituted an arbitral body whose decisions must be given full play by the courts. *Humphrey v. Moore, supra; General Drivers, Warehousemen & Helpers, Local No. 89 v. Riss & Co., Inc.,* 372 U.S. 517 (1963).

Only when an employee is able to present evidence of bad faith in the conduct of the grievance proceedings can he attack and overturn a final and binding grievance committee award in court. *Vaca v. Sipes, supra.* In *Vaca v. Sipes,* this Court ruled than an employee cannot upset a grievance committee decision merely by introducing contrary evidence. He must show that he was represented "arbitrarily, discriminatorily, or in bad faith". *Vaca v. Sipes, supra,* 386 U.S. at 189, 191.

The facts in the record in this case cannot support an inference of bad faith in the handling of the petitioners' grievances. Nor do the facts support petitioners' claims of unfairness and bias by the Special Panel. As the affidavits submitted by the Employer respondents clearly show, petitioners and their Union repre-

sentatives appeared at the Special Panel hearings and were given full opportunity to present witnesses, elicit testimony, make objections and motions, and otherwise present their positions. The declarations of petitioners and their employees originally discharged by Metropolitan on file herein (CR I 30, *et seq.*) show that petitioners were given a fair hearing and that evidence was adduced to support the Special Panel decisions. The declarations show that during the hearings Special Panel members specifically asked the grievants whether they had picketed, engaged in violence, or threatened anyone. Most of the petitioners admitted to the Special Panel (CR I 30, *et seq.*) that they had picketed and, in some cases, challenged trucks during the strike. Furthermore, petitioners admitted that they were given an opportunity to read their grievances and to explain their conduct to the Special Panel (CR I 30, *et seq.*). Of the individuals who submitted grievances regarding their employment status with Metropolitan, a total of seven employees were reinstated by the Special Panel (CR I 21-36, 46-47). Surely this is strong evidence that the Special Panel listened to the grievants' exculpatory statements and weighed their veracity. Under such circumstances, there can be no basis for an inference of unfairness or bad faith in the handling of the grievance process.

CONCLUSION

As the foregoing analysis demonstrates, there is no basis for review by this Court. The Employer respondents respectfully submit, therefore, that the Petition should be denied.

Dated: February 5, 1974.

Respectfully submitted,

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